

Eviction Proceedings

Eviction proceedings, residential or commercial, are handled in the Civil Division of the justice court. The justice court has concurrent jurisdiction with the district court in landlord tenant matters and unlawful detainer matters. Read “How to Get a Judgment in the Justice Court”. However, landlord tenant matters and unlawful detainer matters in justice court are not limited by the \$7,000.00 jurisdictional limit as in other civil actions.

In termination of a residential rental agreement the [Montana Residential Landlord Tenant Act](#) must be followed. Failure to follow the [Montana Residential Landlord Tenant Act](#) may result in the failure of the eviction proceeding. [MontanaLawHelp.org](#) provides legal information and resources on landlord tenant issues.

If the rental agreement/lease is terminated, the landlord may file an action for possession (eviction) and for rent due and a separate action for actual damages for any breach of the rental agreement/lease.

The clerks of the justice court can not provide legal advice. The parties, or their attorney, must prepare and file all forms necessary to commence or defend the action for possession.

Forms for filing a residential landlord tenant action for possession upon termination of the rental agreement/lease are provided by the justice court for individuals acting without an attorney. The forms are not intended to cover all landlord tenant actions. Therefore advice should be sought from competent legal counsel licensed in Montana.

If the action is not for possession, but for unpaid rent or damages for breach of a rental agreement/lease use the forms provided for civil action in the justice court. However be certain to state in the complaint that the claim for unpaid rent or damages is for a breach of a rental agreement/lease.

Procedure for Filing

A complaint for possession is filed by a plaintiff/landlord, or an attorney acting on behalf of a plaintiff/landlord against a defendant/tenant in violation of the rental agreement/lease. If the landlord is a corporation, a partnership, or other legal entity the action must be commenced by an attorney. If there is any question about whether the action should be filed by an attorney read [Rule 2, Justice and City Court Civil Rules](#).

Summons by Clerk

A filing fee of \$25.00 and a user surcharge of \$10.00 are due at the time the complaint for possession is filed. A clerk of the justice court will issue a summons upon the filing of the complaint and payment of the fee and surcharge totaling \$35.00.

The defendant/tenant must be served with a copy of the summons and complaint for possession by the Sheriff's Office or a levying officer. The summons commands the

defendant/tenant to answer the complaint for possession within 10 days of service, exclusive of the date of service.

Default Judgment

If the defendant/tenant fails to answer, and was personally served with the summons and complaint for possession, the plaintiff/landlord may obtain a default judgment for possession. The entry of a default is not automatic. The plaintiff/landlord must request the entry of the default and the default judgment. The court may conduct a hearing it considers necessary for entry of a default judgment. Forms for requesting the entry of default and default judgment are provided by the court.

Filing of an Answer and Counterclaim

A filing fee of \$10.00 and a user surcharge of \$10.00 are due from each defendant/tenant at the time an answer to the complaint for possession is filed.

If the defendant/tenant files an answer the court will set a hearing within 20 days of the filing of the answer. The court will rule on the action for possession within 5 days of the hearing.

If the defendant/tenant files a counterclaim with the answer the plaintiff/landlord must file an answer to the counterclaim within 10 days of the service of the counterclaim. The answer to the counterclaim may request the court to require the defendant/tenant to pay into court all or part of the rent accrued and thereafter accruing,

If the plaintiff/landlord fails to answer the counterclaim the defendant/tenant may request an entry of default and default judgment on the counterclaim.

Eviction

Once a judgment for possession has been entered a Writ of Possession may be issued. The plaintiff/landlord must contact the Sheriff's Office or levying officer for enforcement of the Writ of Possession.

Appeal

A judgment for possession may be appealed to the district court upon the filing of a notice of appeal. An appeal bond or deposit on money in a sum equal to the amount of judgment must be posted. If the bond is not filed within 10 days after the filing of the notice of appeal the appeal shall be dismissed.

The filing of a notice appeal does not stay the enforcement of the Writ of Possession. The defendant/tenant must file the appeal bond and request the justice court to stay the judgment for possession and the Writ of Possession.

If the action is appealed to the district court the hearing must be held within 20 days after the case is transmitted to the district court.